

Parenting and legal family formats in the UK: Scotland

by Kenneth Norrie ¹

The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples

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Based on the [LawsAndFamilies questionnaire](#) on legal family formats for same-sex and/or different-sex couples (Section 3 – Parenting)

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The six sections of the questionnaire

The [interactive LawsAndFamilies Database](#) is based on the [LawsAndFamilies questionnaire](#), which consists of six sections:

- Section 1 – Formalisation
- Section 2 – Income and troubles
- Section 3 – Parenting
- Section 4 – Migration
- Section 5 – Splitting up
- Section 6 – Death

Papers and an interactive database

For each jurisdiction there are therefore six papers like this one. And each of these papers contains the full answers, references and explanations (given by

a legal expert for the jurisdiction concerned) to the questions in one of these six sections. All these papers can be found in open access at www.LawsAndFamilies.eu. There the user also has access to the [interactive part of the LawsAndFamilies Database](#), which can be used to search the whole database and to create comparative overviews for different questions, different years, different countries and/or different legal family formats.

This website also contains references to publications analysing the results of the project, and to some other legal, sociological and statistical publications about same-sex and different-sex families. And it gives information about the methodology used for this questionnaire and database.

About the questionnaire

The [full text of the questionnaire](#) can be found in the paper:

K. Waaldijk, J.M. Lorenzo Villaverde, N. Nikolina & G. Zago, 'The LawsAndFamilies questionnaire on legal family formats for same-sex and/or different-sex couples: Text of the questions and of the accompanying guidance document', *FamiliesAndSocieties Working Paper* 64(2016), www.familiesandsocieties.eu.

The [Guidance document](#) contained in that paper, asked the experts answering the questionnaire to make several assumptions. These included the assumption that the partners have been living together as a couple already for at least two years. Plus the assumption (except for certain questions in Section 4 – Migration) that both partners have the citizenship of the country where they are now both lawfully and habitually residing, and that this is also the country where their relationship would have been formalised and where it would be dissolved.

About the answers

This paper contains the answers, references and explanations – for one jurisdiction – to all questions in one of the six sections of the questionnaire. The answers are presented in columns. Each column is a coloured timeline, representing legal developments for one question for one legal family format.

The year at the top of each coloured timeline is the most recent year for which a question was answered by the author. In the timelines the years given above and below an answer indicate that the answer applied between a certain day in the lower year and a certain day in the higher year. The year "0000" means that the answer applied since an unknown year before 1965. See further the [Guidance document](#).

The following **answer codes and colours** have been used:

Yes	Yes, this is so in the law of this country/jurisdiction, although possibly with a qualifying period of 24 months or less.
Yes, but	Yes, but with exceptions or restrictions, for example a qualifying period of 25 months or more, or only in most parts of the country/jurisdiction, or this is mostly a “dead letter”.
No, but	No, but it may be so exceptionally, or in a very limited way, or in a few parts of the country/jurisdiction, or indirectly, or by using a different legal instrument, or legislation says no while some courts might say yes.
No	No, this is not so in the law of this country/jurisdiction.
Doubt	The law is unclear (the law does not “know” the answer).
?	No information was available.
N/A	Not applicable (for example because this family format is not available in this jurisdiction, or not for same-sex or different-sex couples).
X	This question was not asked for this legal family format.
Open question	Question without answer codes like Yes and No.
Empty cell	For this year the question was not asked or not answered.

The six papers about Scotland

The answers concerning Scotland can be found in the [interactive database](#) and in the following six papers (all of which are published in open access in: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*, Paris: INED, 2017, www.LawsAndFamilies.eu):

Formalisation of legal family formats in the UK: Scotland by Kenneth Norrie (Section 1)

Income, troubles and legal family formats in the UK: Scotland by Kenneth Norrie (Section 2)

Parenting and legal family formats in the UK: Scotland by Kenneth Norrie (Section 3)

Migration and legal family formats in the UK: Scotland by Kenneth Norrie (Section 4)

Splitting up and legal family formats in the UK: Scotland by Kenneth Norrie (Section 5)

Death and legal family formats in the UK: Scotland by Kenneth Norrie (Section 6)

So this paper is based on **Section 3 (Parenting)** of the [LawsAndFamilies questionnaire](#), which contains questions about the following topics:

3.1 Assisted insemination

3.2 IVF

3.3 Surrogacy

3.4 Legal parenthood

3.5 Parental authority

3.6 Parental leave for both parents

3.7 Parental leave for partners

3.8 Grandparents

3.9 Second-parent adoption

3.10 Joint adoption

3.11 Individual adoption

3.12 General background regarding parenting

3.13 Single parenting

3.14 Multiple parenting

In the following pages of this paper, first the answers to questions 3.12, 3.13 and 3.14 are presented, followed by answers to questions 3.1 to 3.11.

3.12 - General background regarding parenting (Open question)

If you consider it useful to provide some general information or comments about (past, present or future) developments and trends in legal policy and case law in your country/jurisdiction, or information on other aspects (socio-legal, political, legal-cultural, etc.) that may be relevant for the understanding your answers above regarding parenting, then please do so here.

3.13 - Single parenting (Open question)

If there are any developments in legal policy and case law regarding the possibilities of an individual person without a partner to have a child through adoption, medically assisted insemination, and/or IVF, you could indicate that here.

3.14 - Multiple parenting (Open question)

If there are any developments in legal policy or case law regarding possibilities for a child to have more than two parents, you could indicate that here.

Many of the rights to parental leave (and indeed other employment rights) in the United Kingdom are traced to EU Directives. On June 23, 2016, the United Kingdom voted in a referendum and narrowly (52 - 48%) decided to leave the European Union. Scotland, however, voted 62 - 38% to remain a member of the European Union (as did, by a smaller majority, Northern Ireland). The Scottish Government subsequently announced that it would do everything it could to maintain Scotland's membership of the EU, and with that the employment protections thereby guaranteed: if the only way to achieve that was to remove Scotland as a constituent element of the "United" Kingdom then that is what the Scottish Government will seek to do. At the moment, however, all rights and responsibilities in Scots law traced to EU law are vulnerable.

Under the Human Fertilisation and Embryology Act 1990, s.13(5), as originally enacted, required providers of infertility treatment to take account of the child's need for a father, and this had the effect of inhibiting the provision of treatment to single women, or women in same-sex relationships. For comment see Blyth, 'The UK's Human Fertilisation and Embryology Act 1990 and the Welfare of the Child: A Critique' (1995) 3 INTERNATIONAL JOURNAL OF CHILDREN'S RIGHTS 417; Laing and Oderberg, 'Artificial Reproduction: the "Welfare Principle" and the Common Good' (2005) 13 MEDICAL LAW REVIEW 328. The Human Fertilisation and Embryology Act 2008 amended s. 13(5), which now reads that account has to be taken of the child's need for 'supportive parenting'. This removes the inhibitions but is still open to conceptual challenge: Walker, 'Potential Persons and the Welfare of the (Potential) Child Test' (2014) 14 MEDICAL LAW INTERNATIONAL 157.

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Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.01 - Assisted insemination**

Is it legally possible in this type of relationship to become pregnant through medically assisted insemination using sperm of a donor?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2009	2016 Yes 0000	2016 Yes 2009
	N/A 0000		Yes, but 2005		Yes, but 1990
			N/A 0000		Yes 0000
References to legal sources: Human Fertilisation and Embryology Act 1990. Human Fertilisation and Embryology Act 2008.		References to legal sources: Human Fertilisation and Embryology Act 1990, art. 13(5), as amended by Human Fertilisation and Embryology Act 2008, art. 14(2)(b).		References to legal sources: Human Fertilisation and Embryology Act 1990, art. 13(5), as amended by Human Fertilisation and Embryology Act 2008, art. 14(2)(b).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Assisted reproduction is governed by the UK-wide Human Fertilisation and Embryology Act 1990, as amended by the Human Fertilisation and Embryology Act 2008 and there is no limitation in that Act as to who may access medically assisted insemination using the sperm of a donor. Before 1990 artificial insemination was unregulated, with no prohibitions.</p>		<p>Explanations and nuances: Assisted reproduction is governed by the UK-wide Human Fertilisation and Embryology Act 1990 and there is no limitation in that Act as to who may access medically assisted insemination using the sperm of a donor. However, between 1990 and 2008 the 1990 Act provided in art.13(5) that in determining whether to provide treatment, licensed clinics had to take account of the need of the child for a father, which had the effect of preferencing women with male partners. The 2008 Act amended the 1990 Act so that art. 13(5) now reads that account has to be taken of the need of the child for supportive parents.</p>		<p>Explanations and nuances: Assisted reproduction is regulated by the UK-wide Human Fertilisation and Embryology Act 1990 and there is no limitation in that Act as to who may access medically assisted insemination using the sperm of a donor. However, between 1990 and 2008 the 1990 Act provided in art.13(5) that in determining whether to provide treatment, licensed clinics had to take account of the need of the child for a father, which had the effect of preferencing women with male partners. The 2008 Act amended the 1990 Act so that art. 13(5) now reads that account has to be taken of the need of the child for supportive parents. Prior to the 1990 Act artificial insemination was not regulated, but neither was it prohibited.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.02 - IVF**

Is it legally possible in this type of relationship to become pregnant through in vitro fertilisation (IVF) using donated egg or sperm?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2009	2016 Yes 0000	2016 Yes 2009
	N/A 0000		Yes, but 2005		Yes, but 1990
			N/A 0000		Yes 0000
References to legal sources: Human Fertilisation and Embryology Act 1990. Human Fertilisation and Embryology Act 2008.		References to legal sources: Human Fertilisation and Embryology Act 1990, art. 13(5), as amended by Human Fertilisation and Embryology Act 2008, art. 14(2)(b).		References to legal sources: Human Fertilisation and Embryology Act 1990. Human Fertilisation and Embryology Act 2008.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Since 1990, IVF has been governed by the Human Fertilisation and Embryology Act 1990, as amended by the Human Fertilisation and Embryology Act 2008, and it is available without restriction to a married person. Before then IVF was unregulated, but not prohibited for a married person.</p>		<p>Explanations and nuances: Assisted reproduction is governed by the UK-wide Human Fertilisation and Embryology Act 1990 and there is no limitation in that Act as to who may access IVF using the sperm or eggs of a donor. However, between 1990 and 2008 the 1990 Act provided in art. 13(5) that in determining whether to provide treatment, licensed clinics had to take account of the need of the child for a father, which had the effect of preferencing women with male partners. The 2008 Act amended the 1990 Act so that art. 13(5) now reads that account has to be taken of the need of the child for supportive parents.</p>		<p>Explanations and nuances: Assisted reproduction is regulated by the UK-wide Human Fertilisation and Embryology Act 1990 and there is no limitation in that Act as to who may access IVF using the sperm or eggs of a donor. However, between 1990 and 2008 the 1990 Act provided in art. 13(5) that in determining whether to provide treatment, licensed clinics had to take account of the need of the child for a father, which had the effect of preferencing women with male partners. The 2008 Act amended the 1990 Act so that art. 13(5) now reads that account has to be taken of the need of the child for supportive parents. Prior to the 1990 Act IVF was not regulated, but neither was it prohibited.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.03 - Surrogacy**

Is it legally possible for both partners in this type of relationship to become the legal parents of a child through the help of a surrogate mother in the country?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 1990	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2009	2016 Yes, but 2009	2016 Yes, but 2009
No, but 0000	N/A 0000		No 2005	No 0000	No 0000
			N/A 0000		

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Surrogacy Arrangements Act 1985, arts. 1 and 1A.</p> <p>Human Fertilisation and Embryology Act 1990, art. 30.</p> <p>Human Fertilisation and Embryology Act 2008, art. 54(2 and (8)).</p> <p>Re MW (Adoption: Surrogacy) 1995 2 FLR 759.</p>		<p>References to legal sources: Surrogacy Arrangements Act 1985, arts. 1 and 1A.</p> <p>Human Fertilisation and Embryology Act 1990, art. 30.</p> <p>Human Fertilisation and Embryology Act 2008, art. 54(2) and (8).</p>		<p>References to legal sources: Surrogacy Arrangements Act 1985, arts. 1 and 1A.</p> <p>Human Fertilisation and Embryology Act 2008, art. 54(2) and (8).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A surrogacy arrangement is entirely unenforceable in Scots law (1985 Act, art. 1A) but parenthood can be transferred from the surrogate mother to the commissioning couple if all parties agree and various other conditions are satisfied (2008 Act, art. 54; previously 1990 Act, art.30). The arrangement is lawful only if altruistic/non-profit and organisations that arrange surrogacies on a commercial basis commit a criminal offence (1985 Act, art. 1). Parenthood will not be transferred by the court if payment has been made beyond reasonable expenses, unless the additional payment has been authorised by the court (2008 Act, art. 54(8)). The court has always authorised additional payments.</p> <p>Under the Human Fertilisation and Embryology Act 2008, s. 54, a married couple may apply to the court for a "parental order", which will transfer parenthood from the surrogate mother (and her husband) to the commissioning couple. This replicates the position in s. 30 of the 1990 Act. Prior to 1990 married couples could make a surrogacy arrangement with a surrogate mother and then adopt the resulting child, as in the case Re MW.</p>		<p>Explanations and nuances: A surrogacy arrangement is entirely unenforceable in Scots law (1985 Act, art. 1A) but parenthood can be transferred from the surrogate mother to the commissioning couple if all parties agree and various other conditions are satisfied (2008 Act, art. 54). The arrangement is lawful only if altruistic/non-profit and organisations that arrange surrogacies on a commercial basis commit a criminal offence (1985 Act, art. 1). Parenthood will not be transferred by the court if payment has been made beyond reasonable expenses, unless the additional payment has been authorised by the court (2008 Act, art. 54(8)). The court has always authorised additional payments.</p> <p>Under the 1990 Act, "parental orders" transferring parenthood from the surrogate mother (and her husband) to the commissioning couple were available only to married couples. But the 2008 Act extended this to include civil partners who may jointly apply to the court for a parental order. Between 2005 (when the Civil Partnership Act 2004 came into force) and 2009 (when the 2008 Act came into force) civil partners in England and Wales could make a surrogacy arrangement and then adopt the child but this was not possible in Scotland since adoption was not available for civil partners in Scotland until the coming into force in 2009 of the Adoption and Children (Scotland) Act 2007.</p>		<p>Explanations and nuances: A surrogacy arrangement is entirely unenforceable in Scots law (1985 Act, art. 1A) but parenthood can be transferred from the surrogate mother to the commissioning couple if all parties agree and various other conditions are satisfied (2008 Act, art. 54). The arrangement is lawful only if altruistic/non-profit and organisations that arrange surrogacies on a commercial basis commit a criminal offence (1985 Act, art. 1). Parenthood will not be transferred by the court if payment has been made beyond reasonable expenses, unless the additional payment has been authorised by the court (2008 Act, art. 54(8)). The court has always authorised additional payments.</p> <p>Under the 1990 Act, "parental orders" transferring parenthood from the surrogate mother (and her husband) to the commissioning couple were available only to married couples (and before the coming into force in 2009 of the Adoption and Children (Scotland) Act 2007 unmarried couples of whatever gender mix were ineligible to adopt a child). But the 2008 Act extended this and now a couple may apply to the court for a "parental order", which will transfer parenthood from the surrogate mother (and her husband) to the commissioning couple. If in an unregistered relationship, the couple must be "living as partners in an enduring family relationship and not within the prohibited degrees of relationship in relation to each other". Gender mix is not relevant.</p>	

Jurisdiction: **UK: Scotland**

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Section: **3 - Parenting**

Question: **3.04 - Legal parenthood**

When one partner gives birth, will (or can) the other partner then also become legal parent of the child, without having to go through adoption?
(For example automatically, or by way of recognition/acknowledgement.)

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2009	2016 Yes 1990	2016 Yes, but 2009
	N/A 0000		No 2005	Yes 0000	No 0000
			N/A 0000		
<p>References to legal sources: Law Reform (Parent and Child) (Scotland) Act 1986, art. 5(1)(a). Human Fertilisation and Embryology Act 1990, s. 28(2). Human Fertilisation and Embryology Act 2008, ss. 35 and 42.</p>		<p>References to legal sources: Human Fertilisation and Embryology Act 2008, art. 42. Marriage and Civil Partnership (Scotland) Act 2014 and Civil Partnership Act 2004 (Consequential Provisions and Modifications) Order 2014/3229 Sch.5 para.18(2)(a).</p>		<p>References to legal sources: Law Reform (Parent and Child) (Scotland) Act 1986, art. 5(1)(b). Human Fertilisation and Embryology Act 1990, art. 28(3). Human Fertilisation and Embryology Act 2008, arts. 36-37, 43-44.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The common law of Scotland applied the Roman principle of <i>pater est quem nuptiae demonstrant</i>, but only as a presumption. In other words, if a married woman gives birth, her husband is presumed to be the father. He will be treated for all purposes as the father of the child, unless and until it is proven that he is not, or that some other man is, the genetic father of the child. Recognition by the father is not necessary. This rule was put onto a statutory basis by the 1986 Act, which also lowered the standard of proof to overturn the presumption: at common law it had been beyond reasonable doubt, under the statute the standard of proof is the balance of probabilities. (The presumption is one of fact and is always open to challenge.) This rule was NOT altered when marriage became available to same-sex couples in 2014 because it is a presumption of fatherhood, not a presumption of parenthood, and is therefore inapplicable to female couples.</p> <p>Parenthood may also be recognised automatically in the spouse of a woman who gives birth after becoming pregnant through artificial reproductive technology. Since the 1990 Act, if a child was born to a married woman as a result of assisted reproduction, her husband (who was not the genetic father) would be regarded in law as the child's father, but not if it was shown that he did not consent to the treatment that led to his wife becoming pregnant. The current law is contained in the 2008 Act, which has the same rule. For children born subsequent to the opening of marriage to same-sex couples, the wife of a mother who became pregnant through artificial means will be regarded as the child's parent, but not if it is shown that she did not consent to the treatment that led to the mother becoming pregnant.</p>		<p>Explanations and nuances: The presumption of paternity in the Law Reform (Parent and Child) (Scotland) Act 1986 was not extended to civil partners - because it is a presumption of fatherhood and the civil partner of a mother is always female. And if the mother became pregnant by medically assisted means, her civil partner was not recognised in any way under the Human Fertilisation and Embryology Act 1990. However, since the 2008 Act came into force in 2009, civil partners of mothers have been able to be recognised as parent. The 2008 Act applied the rule for husbands to civil partners (and now wives) of mothers: the civil partner will be regarded by the law as "a parent" of the child, but not if it is shown that she did not consent to the treatment that led to the mother becoming pregnant. There is no need for the civil partner to "recognise" the child as her's: it is her consent to the treatment that makes her parent.</p>		<p>Explanations and nuances: If a child is born to a cohabitant in an opposite-sex relationship, there is no automatic recognition of the other cohabitant's paternity, but if he acknowledges the child as his and his name is registered as the father, then he is presumed to be the father of the child - a presumption that is rebuttable on showing (on a balance of probabilities) that someone else is the father. As a presumption of paternity, this has no application to same-sex cohabitants. (The answer is "Yes, but" because the presumption is a presumption of fact and is always open to challenge.)</p> <p>If the pregnancy came about by medically assisted reproduction, then between 1990 and 2008 the mother's (male) partner who was not the genetic father would be regarded in law as the child's father, but only if the reproduction treatment had been provided to the mother and her partner "together". Female unregistered partners had no relationship with the child. Since 2009, when the 2008 Act came into force, the mother's unregistered partner will be regarded in law as the child's father (if male) and "a parent" (if female) but only if various conditions (the "agreed fatherhood conditions" or the "agreed female parenthood conditions") are satisfied. The most important condition is that the father or parent agrees to be treated as father or parent.</p>	

Jurisdiction: **UK: Scotland**

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Section: **3 - Parenting**

Question: **3.05 - Parental authority**

Is joint parental authority/responsibility possible for the couple, while only one of the partners is the legal parent of the child?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 0000	2016 Yes 2014	2016 N/A 0000	2016 Yes 2005	2016 Yes 0000	2016 Yes 1997
	N/A 0000		N/A 0000		? 0000
References to legal sources: Children (Scotland) Act 1995, art. 11(3).		References to legal sources: Children (Scotland) Act 1995, art. 11(3).		References to legal sources: Children (Scotland) Act 1995, art. 11(3). T, Petitioner 1997 Scots Law Times 724. da Silva Mouta v Portugal (2001) 31 European Human Rights Reports 47.	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Scots law has never imposed artificial limitations on who may seek parental authority/responsibility jointly with the parent of a child, so a partner, registered or unregistered, will be able to seek an order from the court granting them what are known in Scots law as "parental responsibilities and parental rights" over the child of their partner.</p>		<p>Explanations and nuances: Scots law has never imposed artificial limitations on who may seek parental authority/responsibility jointly with the parent of a child, so a partner, registered or unregistered, will be able to seek an order from the court granting them what are known in Scots law as "parental responsibilities and parental rights" over the child of their partner.</p>		<p>Explanations and nuances: Scots law has never imposed artificial limitations on who may seek parental authority/responsibility jointly with the parent of a child, so a partner, registered or unregistered, has always in theory been able to seek an order from the court granting them what are known in Scots law as "parental responsibilities and parental rights" over the child of their partner. However, Scottish courts were unlikely to be persuaded that it was in the interests of the child for a same-sex partner to share parental responsibilities and parental rights. But in 1997 the Court of Session held that there was no reason in principle why a gay man should not be able to adopt a child - and from that date the Scottish courts have not accepted sexual orientation as an issue that, in itself, is relevant to the child's welfare. In 1999 the European Court of Human Rights in <i>da Silva Mouta v Portugal</i> confirmed this position.</p>	

Jurisdiction: **UK: Scotland**

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Section: **3 - Parenting**

Question: **3.06 - Parental leave for both parents**

When both partners are the legal parents of a child, does each partner then have a statutory right to paid or unpaid parental leave?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2002	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2002	2016 Yes, but 2009
No 1975	N/A 0000		N/A 0000	No 1975	N/A 0000
No 0000				No 0000	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Employment Protection Act 1975.</p> <p>Trade Union Reform and Employment Rights Act 1993, Pt II ss. 23-25.</p> <p>Employment Rights Act 1996, arts. 71-75D.</p> <p>Employment Relations Act 1999.</p> <p>Employment Act 2002.</p> <p>Paternity and Adoption Leave Regulations 2002 (SI 2002/2788).</p> <p>Work and Families Act 2006.</p>		<p>References to legal sources: Employment Rights Act 1996, arts. 71-75D.</p> <p>Employment Relations Act 1999.</p> <p>Employment Act 2002.</p> <p>Paternity and Adoption Leave Regulations 2002 (SI 2002/2788).</p> <p>Work and Families Act 2006.</p>		<p>References to legal sources: Employment Rights Act 1996, arts. 71-75D.</p> <p>Employment Relations Act 1999.</p> <p>Employment Act 2002.</p> <p>Paternity and Adoption Leave Regulations 2002 (SI 2002/2788).</p> <p>Work and Families Act 2006.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The 1975 Act introduced parental leave, but only for mothers and the scheme only covered some working women (depending primarily on length of service). The 1993 Act extended maternity leave to all working women (implementing Directive 92/85/EEC). The current law is contained in the 1996 Act (as amended): a mother is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). So between 1975 and 2002, the answer was No, because mothers alone were entitled to maternity leave. Paternity leave was introduced in the 2002 Act and from that date each partner has a statutory right to parental leave. Now, the father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions. "Partner" is defined in art. 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>		<p>Explanations and nuances: Both civil partners have always been entitled to parental leave on the birth of a child. A mother of a child is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). The father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions. "Partner" is defined in art. 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>		<p>Explanations and nuances: The 1975 Act introduced parental leave, but only for mothers and the scheme was available only for some working women (depending primarily on length of service). The 1993 Act extended maternity leave to all working women (implementing Directive 92/85/EEC). The current law is contained in the 1996 Act (as amended): a mother is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). So between 1975 and 2002 for opposite-sex cohabitants the answer was No, because mothers alone were entitled to maternity leave. Paternity leave was introduced in 2002 and from that date each partner has a statutory right to parental leave. The answer to this question remained N/A for same-sex cohabitants because they could not both be parents until the Adoption and Children (Scotland) Act 2007 and the Human Fertilisation and Embryology Act 2008 came into force, both in 2009. Today, the father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions. "Partner" is defined in art. 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.07 - Parental leave for partners**

When only one partner is the legal parent of a child, does each partner then have a statutory right to paid or unpaid parental leave?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes, but 2002	2016 Yes, but 2014	2016 N/A 0000	2016 Yes, but 2005	2016 Yes, but 2002	2016 Yes, but 2002
No 0000	N/A 0000		N/A 0000	No 0000	No 0000
<p>References to legal sources: Employment Rights Act 1996, arts. 71-75D. Employment Relations Act 1999. Employment Act 2002. Paternity and Adoption Leave Regulations 2002 (Statutory Instrument 2002/2788). Work and Families Act 2006.</p>		<p>References to legal sources: Employment Rights Act 1996, arts. 71-75D. Employment Relations Act 1999. Employment Act 2002. Paternity and Adoption Leave Regulations 2002 (SI 2002/2788). Work and Families Act 2006.</p>		<p>References to legal sources: Employment Rights Act 1996, arts. 71-75D. Employment Relations Act 1999. Employment Act 2002. Paternity and Adoption Leave Regulations 2002 (SI 2002/2788). Work and Families Act 2006.</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: A mother of a child is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). The father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions, including that he or she has "responsibility for the upbringing of the child": 2002 Regulations (this is wider than holding "parental responsibilities and parental rights" under the Children (Scotland) Act 1995). "Partner" is defined in art 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>		<p>Explanations and nuances: A mother of a child is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). The father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions, including that he or she has "responsibility for the upbringing of the child": 2002 Regulations (this is wider than holding "parental responsibilities and parental rights" under the Children (Scotland) Act 1995). "Partner" is defined in art 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>		<p>Explanations and nuances: A mother of a child is entitled to 52 weeks leave in total, 39 of which are paid (though not at full rate). The father of the child or, if different, the mother's partner is entitled to either one or two consecutive weeks' leave, on the satisfaction of various conditions, including that he or she has "responsibility for the upbringing of the child": 2002 Regulations (this is wider than holding "parental responsibilities and parental rights" under the Children (Scotland) Act 1995). "Partner" is defined in art 2 of the 2002 Regulations as a person (whether of a different sex or the same sex as the mother) who lives with the mother (or adopter) and the child in an enduring family relationship but is not a relative of the mother (or adopter).</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.08 - Grandparents**

Do grandparents have a statutory right to visit the children in this type of relationship?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 0000	2016 No, but 2014	2016 N/A 0000	2016 No, but 2005	2016 No, but 0000	2016 No, but 0000
	N/A 0000		N/A 0000		
References to legal sources: Children (Scotland) Act 1995, art. 11(3).		References to legal sources: Children (Scotland) Act 1995, art. 11(3).		References to legal sources: Children (Scotland) Act 1995, art. 11(3).	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Grandparents have no statutory rights in Scots law in respect of their relationship with their grandchildren. They have title, however, to seek a court order regulating the contact that they have with their grandchildren if they wish more than the parents are willing to permit. The order will be made only if it is in the best interests of the child, and no difference is made according to the relationship status of the parents.</p>		<p>Explanations and nuances: Grandparents have no statutory rights in Scots law in respect of their relationship with their grandchildren. They have title, however, to seek a court order regulating the contact that they have with their grandchildren if they wish more than the parents are willing to permit. The order will be made only if it is in the best interests of the child, and no difference is made according to the relationship status of the parents.</p>		<p>Explanations and nuances: Grandparents have no statutory rights in Scots law in respect of their relationship with their grandchildren. They have title, however, to seek a court order regulating the contact that they have with their grandchildren if they wish more than the parents are willing to permit. The order will be made only if it is in the best interests of the child, and no difference is made according to the relationship status of the parents.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.09 - Second-parent adoption**

When only one partner is the legal parent of a child, does the other partner then have the possibility of becoming the child's second parent by way of adoption?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 2009	2016 Yes 2014	2016 N/A 0000	2016 Yes 2009	2016 Yes 2009	2016 Yes 2009
Yes 1995	N/A 0000		No 2005	No 0000	No 0000
Yes, but 1930			N/A 0000		
No 0000					

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978, art. 15.</p> <p>Children (Scotland) Act 1995, art. 97.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(3).</p> <p>Marriage and Civil Partnership (Scotland) Act 2014.</p>		<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(3).</p>		<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(3).</p>	
<p>Explanations and nuances: Between the introduction of adoption into Scotland by the 1930 Act and the 1995 amendments, the spouse of a parent could adopt the child only by means of a joint application with their spouse (one of the child's natural parent). So the natural parent had to give up their natural parenthood and become an adoptive parent. The 1995 Act, however, also allowed the spouse (the child's step-parent) to make a sole application so long as the natural parent has parental responsibilities and parental rights. The Adoption and Children (Scotland) Act 2007 permits the spouse to adopt the other spouse's child only by means of a sole application. Since 2014, "spouse" includes same-sex married partners.</p>		<p>Explanations and nuances: The 1978 Act followed the rule in the 1930 Act that a parent's partner could adopt a child only if married to the partner. This was NOT changed in Scotland when civil partnership was first introduced in 2005. The 2007 Act, coming into force in 2009, permits the parent's partner to become the child's second parent through adoption if he or she is the parent's civil partner.</p>		<p>Explanations and nuances: The 1978 Act followed the rule in the 1930 Act that a parent's partner could adopt a child only if married to the partner. The 2007 Act, coming into force in 2009, permits the parent's partner to become the child's second parent through adoption if the couple are "living together as if married in an enduring family relationship" and the other partner is over 18 (and, of course, consents).</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.10 - Joint adoption**

Can partners jointly adopt a child?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 Yes 1930	2016 Yes 2014	2016 N/A 0000	2016 Yes 2009	2016 Yes 2009	2016 Yes 2009
No 0000	N/A 0000		No 2005	No 0000	No 0000
			N/A 0000		
<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978, art. 14.</p> <p>Civil Partnership Act 2004.</p> <p>Adoption and Children (Scotland) Act 2007, art. 29(3)(a).</p>		<p>References to legal sources: Adoption (Scotland) Act 1978, art. 14.</p> <p>Civil Partnership Act 2004.</p> <p>Adoption and Children (Scotland) Act 2007, art. 29(3)(b).</p>		<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978, art. 14.</p> <p>Adoption and Children (Scotland) Act 2007, art. 29(3)(c) and (d).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: Between 1930 (when adoption was introduced into Scots law) and 2009, joint adoption was possible only for married couples. Under the current legislation (the 2007 Act, coming into force in 2009) married couples may still adopt a child jointly and this has included, since 2014, same-sex married couples.</p>		<p>Explanations and nuances: The 1978 Act retained the rule in the 1930 Act that only married couples could jointly adopt a child, and this was NOT changed when civil partnership was introduced into Scots law in 2005. However, since 2009, when the 2007 Act came into force, civil partners have also been able to jointly adopt a child.</p>		<p>Explanations and nuances: The 1978 Act retained the rule in the 1930 Act that only married couples could jointly adopt a child. However, since 2009, when the 2007 Act came into force, unregistered couples have also been able to jointly adopt a child, so long as they are living together as if married in an enduring family relationship.</p>	

Jurisdiction: **UK: Scotland**

Source: K. Norrie, "Parenting and legal family formats in UK: Scotland". In: K. Waaldijk et al. (eds.), *The LawsAndFamilies Database – Aspects of legal family formats for same-sex and different-sex couples*. Paris: INED, 2017, www.LawsAndFamilies.eu, [LawsAndFamilies-UK_SC-Section3.pdf](#) (please use this full citation when citing any information from this table).

Section: **3 - Parenting**

Question: **3.11 - Individual adoption**

Can one partner in this type of relationship individually adopt a child?

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
2016 No, but 1930	2016 No, but 2014	2016 N/A 0000	2016 No, but 2009	2016 No, but 2009	2016 No, but 2009
No 0000	N/A 0000		Yes 2005	Yes 1930	Yes 1930
			N/A 0000	No 0000	No 0000
<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978, art. 15.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(4).</p>		<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978, art. 15.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(4).</p>		<p>References to legal sources: Adoption of Children (Scotland) Act 1930.</p> <p>Adoption (Scotland) Act 1978.</p> <p>Adoption and Children (Scotland) Act 2007, art. 30(5).</p>	

Marriage		Registered partnership		Cohabitation	
diff.-sex	same-sex	diff.-sex	same-sex	diff.-sex	same-sex
<p>Explanations and nuances: The general rule is that a married person may not adopt a child individually (except in relation to step-parent adoption). But a married person will be allowed to adopt if the court is satisfied that the applicant's spouse cannot be found or is by reason of physical or mental ill-health incapable of making an adoption application, or the spouses have separated and are living apart and the separation is likely to be permanent.</p>		<p>Explanations and nuances: Under the 1930 and 1978 Acts a person who was not married was able to adopt a child individually. This was not changed by the Civil Partnership Act 2004 and so either civil partner could adopt a child individually (even although the couple could not adopt jointly). This was changed when the 2007 Act came into force in 2009, and since then the general rule has been that a civil partner, like a married person, may not adopt a child individually (except in relation to step-parent adoption). But a civil partner will be allowed to adopt if the court is satisfied that the other civil partner cannot be found or is by reason of physical or mental ill-health incapable of making an adoption application, or the civil partners have separated and are living apart and the separation is likely to be permanent.</p>		<p>Explanations and nuances: Under the 1930 and 1978 Acts, an unmarried couple could not adopt jointly, though either one could adopt a child individually. Since the 2007 Act came into force in 2009, the general rule is that a member of a "relevant couple", which includes couples who are living together as if married in an enduring family relationship (irrespective of gender mix) may not adopt a child individually (except in relation to step-parent adoption). But a cohabitant will be allowed to adopt if the court is satisfied that the other cohabitant is by reason of physical or mental ill-health incapable of making an adoption application.</p>	